

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Spiegel	Conf. No.:	1094
Serial No.:	09/708,129	Art Unit:	2192
Filing Date:	11/07/2000	Examiner:	Rutten, James D.
Title:	METHOD, SYSTEM, AND COMPUTER PROGRAM PRODUCT FOR MAINTAINING SOFTWARE ON A COMPUTER SYSTEM WITH AUTOMATIC DEPENDENCY RESOLUTION	Docket No.:	END920000101US1 (IBME-0095)

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF

The following remarks are directed to the points of argument raised in the Examiner's Answer dated December 28, 2007.

In Section 3 of the Examiner's Answer, the Examiner states that "Claims 19 and 20 were rejected in the 3/20/07 Final Rejection but were not indicated in the brief as pending, rejected, or appealed." Appellant appreciates correction of this oversight and respectfully submits that claims 19 and 20 were added subsequent to the original filing, are pending, stand rejected and are also included in this appeal. This correction is consistent with the remainder of the brief.

In Section 10 of the Examiner's Answer, the Examiner indicates that "a database of all second maintenance arguments that are known as being able to be installed" is not supported in the specification. In support of this statement, the Examiner hints at the operability of such a

system by ascribing to the database omniscient characteristics. This interpretation by the examiner is unreasonable and reflects the prosecution history of the application in which various amendments that attempt to convey the intention of the invention that have been put forth have had elements completely read out of the claim, have been interpreted so narrowly as to have not been directly supported by the specification or, in the alternative, have been interpreted so broadly as to have been unworkable.

For example, a limitation of “a database of known second maintenance arguments” was rejected by the Examiner who read the word “known” completely out of the claim, stating, in essence, that if a second maintenance argument is in the database, then it must be known. Similarly, when the claim was amended to recite “all known second maintenance arguments” the Examiner argued, in effect, that the database could not know everything. This later argument is the basic argument that the Examiner now uses in his Answer to argue against the current wording of the claim. However, this interpretation does not reflect either the letter or the spirit of the claim.

Appellant has repeatedly attempted to convey that the second maintenance arguments in the database is not merely limited to those that are related to software that is currently being installed, but is rather more global in nature and attempts to incorporate entries for any application that may be installed. In doing so, Appellant has repeatedly modified the claims to find language that is acceptable to the Examiner, and has repeatedly requested the Examiner’s help in doing so. Appellant believes that the concept of a database that is intended to be global in nature is disclosed in the specification, as argued in Appellant’s brief, and is reflected in the claim limitation as currently written.

For the reasons set forth herein and in the Appeal Brief, it is further submitted that the Final Rejection of Claims 1-20 should be reversed.

Respectfully submitted,



Hunter E. Webb
Reg. No. 54,593

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Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)

RAD/hew